

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, JULY 21, 2014**

1. Opening of Meeting

The meeting was convened by Liquor Commissioner Rogina at 4:45 p.m.

2. Roll Call

Members Present: Liquor Commissioner Rogina, Robert Gehm, Ald. Payleitner, and Chuck Amenta

Absent: Ald. Lewis

Others Present: Police Chief Keegan, Deputy Chief Huffman, Mark Koenen, Atty. John McGuirk, and Tina Nilles

3. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on June 16, 2014.

Chrmn. Rogina: I ask for an amendment to these minutes. In the document there is a copy of the court reporter's piece of those minutes where it is mention of Chief Lamkin and it should read Interim Chief Huffman and would like it to read as such for where it states Chief Lamkin.

Motion by Ald. Payleitner second by Mr. Amenta to reflect the minutes of the amendment to replace mention of Chief Lamkin to state Interim Chief Huffman.

Voice Vote: Ayes: unanimous, Nays: none; Absent Lewis. Chrmn. Rogina did not vote as Chairman. **Motion carried.**

Motion by Mr. Gehm, second by Ald. Payleitner to accept and place on file minutes of the Liquor Control Commission meeting held on June 16, 2014.

Voice Vote: Ayes: unanimous, Nays: none; Absent: Lewis. Chrmn. Rogina did not vote as Chairman. **Motion carried.**

4. Discussion regarding Alibi Bar & Grill, Ltd. Violation Notice.

Chrmn. Rogina: On or about June 6, 2014 at approximately 10:39 p.m., the Licensee Alibi Bar & Grill, Ltd. by and through its employees, officers and/or agents, committed one or more of the following offenses in or upon the licensed premises at 12 N Third Street, St. Charles, IL 60174. First offense sold alcoholic beverages outside its licensed premises and/or allowed the

consumption of alcoholic beverages purchased on its premises to be consumed outside its licensed premises. Second offense allowed a patron to exit its premises while in possession of an alcoholic beverage.

Mr. Rich Simpson, 236 E Vallett, Elmhurst, IL 60126, Rich Simpson, Jr., 4507 Washington, Downers Grove, IL 60515.

Rich Simpson, Sr.: As a property owner and business owner of the downtown St. Charles, I am concern of many issues as well. I understand that it is a privilege to have a liquor license and we go extremely out of our way to have a large amount of security, we have double guys at the doors watching everything going in and out. We found that on this alleged incident, no officer ever came in and informed us of anything, talked to us, nothing. So when I got this notice served to us we were totally shocked and had no idea of what was going on. At that time I immediately filed a FOIA to understand what was going on.

Chrmn. Rogina: If there's a conflict at all or some problem with the date, etc., I see no problem postponing this until the August meeting at which time you have had a chance to review all the documents that were filed, you have a chance to review the police report, and then have a response of guilty/not guilty at that point in time. I see this as being fair and it gives you an opportunity to respond to the charges, if that in fact, is what happens. I understand there was a discrepancy on the date but with respect to everything else, I feel confident in our City Police Department as to what was reported and will go from there. We'll give you a chance either by yourself or through your attorney to review the documents and come back here one month from now and respond at that point in time.

Rich: I've read the documents and we can proceed.

Chrmn. Rogina: Okay then I ask you the question if you plead guilty or not guilty, if we are going to proceed here now. If you plead not guilty we will go to a hearing next month. If you plead guilty than I'll give you a chance after that plea to discuss mitigation where here is what I would like to say even though I'm pleading guilty.

Rich: Okay, then let's put it onto the next month and I'll review everything.

Chrmn. Rogina: So you are taking my offer and not entering a guilty or not guilty plea. We accept that. Next month after everything has been reviewed, I would ask you to come forward, I'll read the charges again, and at that point in time you would enter a guilty or not guilty plea based upon the facts that have been presented to you.

Atty. McGuirk: We'll amend the complaint to specify the proper date and serve you with that amending complaint and be back here next month. So next month the complaint will reflect the proper date as opposed to the misnomer and you'll have to indicate at that point whether you admit to that or ask for an evidentiary hearing.

Ald. Payleitner: So when Mr. Simpson comes back, the police officer who made the charge will be here then as well?

Chrmn. Rogina: No, because if Mr. Simpson comes back and pleads guilty, we'll proceed to our normal routine and go into Executive Session and deal with that matter; or if he pleads not guilty, then we wouldn't have a hearing until September.

Ald. Payleitner: What was the discrepancy in the date?

Chrmn. Rogina: It was June 6 vs. June 1.

5. Discussion regarding The Filling Station Violation Notice.

Chrmn. Rogina: On or about July 10, 2014 at approximately 2:01 a.m., the Licensee The Filling Station by and through its employees, officers and/or agents, committed one or more of the following offenses in or upon the licensed premises at 300 W Main Street, St. Charles, IL 60174. First offense sold alcoholic beverages outside its licensed premises and/or allowed the consumption of alcoholic beverages purchased on its premises to be consumed outside its licensed premises. Second offense failed to maintain an employee or agent posted during the required hours at each entrance to the licensed premises.

Peter Milligan, 300 W Main Street, St. Charles: So let me get this straight; I can plead not Guilty or I can plead guilty and offer my mitigating circumstances now or next month?

Chrmn. Rogina: Now or you can plead not guilty and have a hearing scheduled for next month.

Peter: I did not have a chance to discuss this with the City Attorney but I'm not sure what my fine would be if I were to plead guilty?

Chrmn. Rogina: We adopted what we believe is the right approach of whether you agree or disagree, we are not into plea bargaining. I would say that we would review the number of offenses that have taken place that are of similar nature to past offenses; and it's been the practice of this particular tribunal that the penalties are increasing. So being blunt with you here, I certainly see a fine that would be equal to or greater than the last time you were fined for this offense; and I see the possibility of a suspension to your license. By suspension I don't mean closing you down but as the same nature that you may have had in previous times.

Peter: Okay pleading guilty vs. pleading innocent and being found guilty will cost me more money, but what about the assessment of the punishment. Does that go up?

Chrmn. Rogina: That would be a good guess on your part that it would go up previous from the last one.

Peter: I too also have a problem with the time. I was served last Monday, I marched down to the Police Department and filed a FOIA for the report and I hadn't gotten it. This morning I went

down and they rushed it for me and I didn't get it until three hours ago; I would like, if I could, to come back next month after I had more time to consult a lawyer and review with my employees what happened vs. what's on the report?

Chrmn. Rogina: The licensee is implying that he hasn't had sufficient time.

DC Huffman: What he is saying is accurate that he received the report three hours ago. I don't know when he filed his original request. The Police Department wouldn't object to continue it to next month.

Ald. Payleitner: Is the police report in question the one that is on-line on Friday from the public website?

DC Huffman: Yes that is the one.

Chrmn. Rogina: The Police Department is okay with doing this, so you can come back next month.

Ald. Payleitner: Would it be possible that when a request is made like that, they could say it is attached to the agenda?

DC Huffmann: When someone files for a report such as that, we have certain protocols we have to follow.

6. Recommendation of an Ordinance Amending Title 5 "Business License and Regulations," Chapter 5.08 "Alcoholic Beverages," Section 5.08.010 "Definitions" of the St. Charles Municipal City Code (Intoxication) to go before Committee and Council approval.

Deputy Chief Huffman: This is a recommendation to approve an Ordinance Amending Title 5 "Business License and Regulations," Chapter 5.08 "Alcoholic Beverages," Section 5.08.010 "Definitions" of the St. Charles Municipal City Code – specifically the definition on intoxicated. The last several months we've been meeting with liquor license holders, specifically Classes B & C, in an effort to work together to resolve some of the recurring issues we've been having in the downtown bar area. Those issues include bar fights, disturbances, urination in public, etc. Through these discussions we talked about over serving their patrons; the patrons become intoxicated to the point that they are engaging in these illegal activities. One thing that came up in the discussions we talked specifically about is our code that is currently in place referencing to serving intoxicated patrons and harboring an intoxicated person. The bar owners brought how can we hold them to that standard when there really isn't a definition of intoxicated. Through BASSET training, intoxicated is falling off of bar stools, sitting with head lowered, slurred speech. We research the BASSET training and had one of our offices go through the training and discovered the definition of intoxicated that BASSET provided is not nearly as sufficient for our purposes.

We researched with legal counsel to come up with a definition of intoxicated for our City Code and that is *“Intoxication or intoxicated means that as a result of drinking alcoholic liquor there is an impairment of a person’s mental or physical faculties so as to diminish the ability to think and act with ordinary care.”*

This definition was approved as a jury instruction by Illinois Supreme Court, in a previous case, years ago. We would like to add this definition of intoxicated to our Municipal Code to give us a tool to continue working with the bars on education and teaching to servers what exactly intoxication is by the legal definition, and then enforcement when we need it.

Chrmn. Rogina: Commends the Police Department for the work that was done on this. We should look into this to see where it emanated from, perhaps some bar, and use this Illinois Supreme Court case as a reference tool.

Ald. Payleitner: I agree using case law. The wording is there so why not use it, but also the concise nature of it – I appreciate that as well.

Chrmn. Rogina: Motion to approve the language that has been presented to us tonight to Council Committee as a first step at adopting it as part of the City ordinance.

Motion by Ald. Payleitner, second by Gehm to recommend approval of an Ordinance Amending Title 5 “Business License and Regulations,” Chapter 5.08 “Alcoholic Beverages,” Section 5.08.010 “Definitions” of the St. Charles Municipal City Code (Intoxication) to go before Committee and Council approval.

Voice Vote: Ayes: unanimous, Nays: none; Absent: Lewis. Chrmn. Rogina did not vote as Chairman. **Motion carried.**

7. Recommendation of an Ordinance Amending Title 5 “Business License and Regulations,” Chapter 5.08 “Alcoholic Beverages,” Sections 5.08.090, 5.08.100, 5.08.110, and 5.08.130 of the St. Charles Municipal City Code (Class E-7 License) to go before Committee and Council approval.

Deputy Chief Huffman: Paul Lencione and the Police Department came before you on June 16 on the possibility of creating an E-7 liquor license. The E-7 license would be used to provide an opportunity for businesses such as the Blue Goose Market to promote the sale of products that they offer for sale within their stores. The E-7 license will allow them to have catered events in their parking lot, along with the service of beer and wine to go with the food. At your direction, staff along with legal counsel, crafted language for an E-7 license, and the E-7 license also follows all the normal regulations that are already contained within the E code. There was a question that was proposed when we initially approach you with this and the question was would minors be allowed inside the license premise? The answer to that question is that there is already language within the E-7 code that says that minors are prohibited in any license premise under an E-7 license except for permission from the liquor commissioner with advice and consent of City Council.

The E-7 is only for class A2 and A2B license holders. Again the dispensing of food must be predominant and there can be no more than four E-7 licenses that are issued to any one license holder within a fiscal year. A one day event is one license. If the event runs two days that would be two separate licenses. The application fee has to be submitted 45 days prior to the event, hours of service are restricted from 12:00 p.m. to 9:00 p.m. Monday through Sunday, and as we spoke before the Scarecrow Festival weekend prohibition on the issuance of B licensing is not contained within this ordinance. The application fee for an E-7 license is \$100 per day. In addition the E-7 license also necessitates a change to our municipal code under license fees so that it codifies the \$100 a day for the license, there is also a change in Section 5.08.130 as it relates to license hours of sale which codifies the 12:00 p.m. to 9:00 p.m. hours.

Ald. Payleitner: In reference to the minors, that would be determined per event?

Chrmn. Rogina: So procedurally whoever the owner of the property is, the licensee who is hosting the event would like to have minors present, they would make that request to the Liquor Commission and I agree, it would still go before the City Council for advice and consent for approval.

DC Huffman: That's correct. The applicant would indicate at the time they submit the application whether or not they desired minors to be present in the event in the license premise in which case it would go before a committee and then onto Council for final approval.

Chrmn. Rogina read into the record comments from Ald. Lewis in the minutes from the last Liquor Control Commission meeting. "I would like to reiterate what the Mayor said, that I too like the idea that the businesses are trying to embrace the festivals vs. complaining. Businesses saying while this is going on, what can I do to be more profitable."

Mr. Gehm: For clarity in one part we state the hours they can offer this from, but then in Section L it states "unlawful to sell between 9:01 p.m. and 11:59 p.m." Can we make those read the same for consistency?

DC Huffman: We can take a look at the code. That specific section of the code states when it's not allowed and that's consistence with the rest of that section.

Motion by Mr. Amenta, second by Mr. Gehm to approve a recommendation of an Ordinance Amending Title 5 "Business License and Regulations," Chapter 5.08 "Alcoholic Beverages," Sections 5.08.090, 5.08.100, 5.08.110, and 5.08.130 of the St. Charles Municipal City Code (Class E-7 License) to go before Committee and Council approval.

Voice Vote: Ayes: Unanimous; Nays: none; Absent Lewis. Chrmn. Rogina did not vote as Chairman. **Motion carried.**

8. Other Business

9. Executive Session (5 ILCS 120/2 (c)(4)).

10. Adjournment

Motion to adjourn by Mr. Gehm, second Ald. Payleitner 5:15 p.m.

Voice Vote: Ayes: Unanimous; Nays: none; Absent Lewis. Chrmn. Rogina did not vote as Chairman. **Motion carried.**